APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice N. J. Wadia.

EMPEROR *v.* NANDKISHORSINGH GAYAPRASAD (ORIGINAL ACCUSED), OPPONENT.*

1937
March 8

Bombay Motor Vehicles Rules, 1915, Rule 3 (1)—Letting a motor car to a selected customer—Letting not done in a public place—Letting referred to in the rule is complementary to plying for hire—Breach of the rule—Whether an offence.

Rule 3 (*1*) of the Bombay Motor Vehicles Rules, 1915, applies to letting in public places, and this implies that the actual transaction of letting must be done in a public place where it is open to any member of public to take a car on hire. It cannot, therefore, apply to a case where the letting was to a selected customer and was not done in a public place. The letting referred to in the Rule is complementary to plying for hire, and the Rule is intended to cover cases in which the letting may be done by one person, the owner of the car, and the plying for hire may be done by another person, a servant.

The opponent entered into an arrangement with the Principal of a school to bring pupils of the school in his bus from different places and to take them back to their homes. He was paid at a certain rate per month for each student. He did not obtain a licence under Rule 3 (*1*) from the District Superintendent of Police. He was, therefore, prosecuted for committing a breach of the said rule, by letting his bus for hire. The Magistrate acquitted him of the offence. The Government of Bombay having appealed :

Held, that the accused was rightly acquitted as he had not committed a breach of rule 3 (*1*) of the Bombay Motor Vehicles Rules, 1915.

Emperor v. *Ganesh Ramchandra*,[1] *Local Fund Overseer, Mayavaram* v. *Pakkirisami Thevan*,[2] *Sardul Singh* v. *The Crown*,[3] discussed and distinguished.

APPEAL by the Government of Bombay against the order of acquittal passed by K. V. Naik, City Magistrate, First Class, Bandra.

Offence under Rule 3 (*1*) of the Bombay Motor Vehicles Rules, 1915.

The facts are sufficiently stated in the judgment.

*Criminal Appeal No. 535 of 1936.

(1) (1930) 32 Bom. L. R. 337. (2) (1927) 51 Mad. 527.
(3) (1929) 10 Lah. 505.

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The City Magistrate, First Class, who tried the case, held that no offence was committed by the accused. He, therefore, acquitted him giving reasons as follows :—

"The question is whether on these facts the accused has committed a breach of Rule 3 (*1*) of the Rules. In this connection I am referred to the Rulings of the Lahore High Court in *Sardul Singh* v. *The Crown* (1929, I. L. R. 10 Lah. 505) and to that of the Madras High Court in *Local Fund Overseer, Mayaram* v. *Pakkirisami Thewan* (1928, A. I. R. Madras 166). Both these cases are referred to in the case of the Bombay High Court, *Emperor* v. *Ganesh Ramchandra Rajwade* (Criminal Cases of Bombay High Court, Volume X, 303). As observed in the decision of the Bombay High Court the Punjab Motor Vehicles Rules are similar to the Rules applicable in this Presidency. The Lahore High Court held that to ply for hire means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares and also to offer its use on payment to any member of the public, thereby soliciting custom. Merely hiring a vehicle to another does not amount to plying for hire. In the Madras case it was held that a vehicle cannot be said to ply for hire on a public road, simply because it is made use of as a hired vehicle on that road. Plying for hire means the act of waiting for soliciting custom. Having regard to these rulings I hold that there was no soliciting of custom on the part of the accused."

The Government of Bombay appealed to the High Court.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Government of Bombay.

H. K. Nargolkar, for the accused.

N. J. WADIA J. This is an appeal by the Government of Bombay against the acquittal of the opponent by the City Magistrate, First Class, Bandra. The opponent was prosecuted for having committed a breach of rule 3 (*1*) of the Motor Vehicles Rules by letting his bus for hire without having obtained a permit as required by that rule. The rule provides that subject to the provisions of rules 7 (*5*) and 7 (*5A*) no motor vehicles shall be let or plied for hire in public places without an owner's permit granted by the District Superintendent of Police. The rule mentions the

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fee to be charged and states that the permit shall be in form A set forth in the schedule to the rules and that the District Superintendent of Police shall enter on the permit the maximum number of passengers, including driver and also cleaner, conductor, or agent, if any, and the quantity of luggage or the maximum weight of goods which may be carried at any one time by such vehicle.

The facts of the case were that the opponent had entered into an arrangement with one Mr. Vakil, the Principal of the Pupils' Own School, to bring the pupils of the school in his bus from Khar, Vile-Parle and Santa Cruz to the school and take them back to their homes. The accused was paid at the rate of Rs. 4 per month for students from Khar, Rs. 3 per month for students from Santa Cruz and Rs. 2 per month for students from Vile-Parle, and used to get on an average Rs. 120 a month. He admitted that he had not obtained a license under rule 3 (*1*) of the Rules from the District Superintendent of Police. The learned Magistrate acquitted the accused holding, on the authority of certain rulings of the Bombay, Madras and Lahore High Courts, that plying for hire implied that there was waiting and soliciting for custom in a public place, and that as this had not been proved, no offence had been committed.

It is contended by the learned Government Pleader that the rule deals with letting as well as with plying for hire and that the rulings on which the learned Magistrate has relied deal with the question of plying for hire and do not govern the case of letting with which we are concerned.

In *Emperor* v. *Ganesh Ramchandra*[1] it was held by this Court that the expression "to ply for hire" in rule 7 (*1*) of the Motor Vehicles Rules means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire

[1] (1930) 32 Bom. L. R. 337.

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it or to travel in it on payment of the usual fares, and also to offer its use on payment to any member of the public, thereby soliciting custom. Reference was made in the judgment in that case to a decision of the Madras High Court in *Local Fund Overseer, Mayavaram* v. *Pakkirisami Thevan*[1] and *Sardul Singh* v. *The Crown.*[2] The facts in these three cases were different from the facts we are dealing with. In the Bombay case the accused who held a general license under section 6 of the Motor Vehicles Act and also a license in form A under rule 3 (*1*) entitling him to let or ply the bus for hire on a certain road was found proceeding in the bus on a road not covered by the license. He was going to see the District Superintendent of Police in order to obtain an extension of the permit contained in his license in form A. It was held that he had committed no offence as it was clear from the evidence that he was driving the bus on a private errand and could not be said to have been using it as a motor vehicle, meaning a motor vehicle let or plying for hire. In the Lahore and Madras cases the facts were that the accused who held licenses for letting and plying for hire within certain Municipal limits were found driving the cars outside those limits with passengers. It was found in both cases that the cars had been let within the licensed Municipal limits and it was held that the cars could not be held to have been plied for hire outside the Municipal limits where they were found because the act of plying a motor vehicle for hire can only be done at the place and the time the hiring is effected. It was contended on behalf of the Local Board in the Madras case that a vehicle plies for hire on a public road if it is made use of as a hired vehicle on that road, and that it is not a necessary condition that the actual hiring should take place upon that road. That contention was not, however, accepted, and the view taken was that the plying

[1] (1927) 51 Mad. 527. [2] (1929) 10 Lah. 505.

of a motor vehicle for hire means the act of waiting for soliciting custom, and that, therefore, so soon as any person has hired it the act of plying for hire is complete.

Although the facts in these three cases are different, it seems to us that the principle laid down as regards plying for hire must apply to letting for the purposes of rule 3. The rule applies to letting in public places and this implies that the actual transaction of letting must be done in a public place where it is open for any member of the public to take the car on hire. It cannot, therefore, apply to a case of the kind we are dealing with where the letting was to a selected customer, viz:, the Principal of the school, and was not done in a public place. The car clearly was not available to any member of the public. We are unable to accept the contention of the learned Government Pleader that the words " in public places " in the rule do not govern the word " let " and that the rule covers the case of any letting whether that letting be in a public place and to any member of the public or whether it is done in a private place and to a selected customer only. In our opinion the letting referred to in the rule is complementary to the plying for hire and the rule is intended to cover cases in which the letting may be done by one person, the owner of the car, and the plying for hire may be done by another person, a servant. In such a case if the rule did not provide for letting as well as plying for hire the owner who let the car would go unpunished.

In our opinion the view taken by the learned Magistrate that the accused has not committed a breach of rule 3 (*1*) is correct and the appeal must, therefore, be dismissed.

Appeal dismissed.

J. G. R.